# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of	)	
	)	WT Docket No. 12-4
Application of Cellco Partnership	)	
d/b/a Verizon Wireless and	)	ULS File Nos.
SpectrumCo LLC for Consent to Assign	)	0004996680
Licenses	)	0004993617
	)	
Application of Cellco Partnership d/b/a	)	
Verizon Wireless and Cox TMI Wireless,	)	
LLC for Consent to Assign Licenses	ĺ	

# **OPENING COMMENTS OF THE GREENLINING INSTITUTE**

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The Greenlining Institute ("Greenlining") hereby files these comments in the above-captioned matter pursuant to the Commission's Public Notice of January 19, 2012. At this time, the Applicants have not provided sufficient information for Greenlining to determine whether to support or oppose the proposed transaction. Accordingly, Greenlining urges the Commission to further investigate the effects of the proposed transaction and the related agreements between the Applicants on the public interest, especially examining the concerns raised by Greenlining below.

#### I. INTRODUCTION

The agreements addressed in the Applications provided to the Commission are part of a larger "bundle" of agreements between the Applicants. However, the Applications only address the proposed transfer of spectrum and do not address the other agreements. Additionally, what information the Applicants have provided regarding other agreements has been heavily redacted, and some of the Applicants have provided Greenlining with contradictory information. Accordingly, there is insufficient information to determine what effect the bundle of agreements will have on the public interest; Greenlining urges the Commission to investigate further before making that determination.

While the Applicants argue that the spectrum transfer will not affect competition, the Applicants have apparently failed to consider that Cox and SpectrumCo ("the Cable Companies") may be potential competitors that impose limit pricing on incumbent wireless providers. The Commission should investigate whether the Cable Companies' threat of entry

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<sup>&</sup>lt;sup>1</sup> FCC Public Notice, DA 12-67, Docket No. 12-4 (January 19, 2012) (Establishing Pleading Cycle) hereafter, Public Notice).

<sup>&</sup>lt;sup>2</sup> See Letter from Media Access Project et al. to Marlene H. Dortch, WT Docket No. 12-4 (Feb. 7, 2012).

<sup>&</sup>lt;sup>3</sup> See sections II.B. and II.C, below.

into the market has affected competition, and how competition would be affected if that threat no longer existed.

The Applicants state that the Commission should examine the transfer of licenses in isolation from the Applicants' bundle of agreements. However, a proper determination of the proposed transaction's effect on the public interest requires an examination of all of the agreements between the Applicants. The Commission should consider the entire set of agreements; that consideration should include an examination of the customer service impacts of the bundle of agreements. If necessary, the Commission should impose conditions of approval to ensure that consumers, and the public interest, are protected.

#### II. STATEMENT OF FACTS

The Applications in this proceeding address only the transfer of licenses from Cox and SpectrumCo to Verizon Wireless ("Verizon").<sup>4</sup> However, the license transfer is part of a larger "bundle" of agreements between Verizon, Verizon's parent company, Cox, and the individual cable companies who own interests in SpectrumCo—Bright House, Comcast, and Time Warner.<sup>5</sup> The "bundle" of agreements consists of the license transfer agreements ("the proposed transaction"), a group of agency sales agreements ("the agency agreements"), and a joint venture development agreement ("the joint venture agreement").

Under the terms of the proposed transaction, the Cable Companies would transfer a total of 152 AWS licenses to Verizon.<sup>6</sup> The licenses involved in the transactions cover approximately

<sup>&</sup>lt;sup>4</sup> See Verizon Wireless-Cox Application, File No. 0004996680, Public Interest Statement at 1 (hereafter, "Verizon-Cox Public Interest Statement"); See also, Verizon Wireless-SpectrumCo Application, File No. 0004993617, Public Interest Statement at 1 (hereafter, "Verizon-SpectrumCo Public Interest Statement").

<sup>&</sup>lt;sup>5</sup> Public Notice at 2.

<sup>&</sup>lt;sup>6</sup> *Id*. at 1-2.

94% of the U.S. population.<sup>7</sup> Under the terms of the agency agreements the Cable Companies will offer Verizon's wireless service as part of a bundle of cable and wireless services.<sup>8</sup> Under the terms of the joint venture agreement, the Applicants will enter into a joint venture which "will collaborate to develop innovative technology and intellectual property that will integrate wired video, voice and high-speed Internet with wireless technologies" <sup>9</sup>

#### A. The Market Environment

#### 1. Wireless

The Cable Companies initially purchased the spectrum at issue in this transaction in 2006. The companies made these purchases in order to enter the wireless market. However, the companies state that since that time, they have determined that it would not be profitable to become facilities-based wireless providers. Accordingly, they are selling the spectrum to Verizon. Verizon.

#### 2. Cable

Verizon began deploying and aggressively marketing its FiOS service in 2005, offering FiOS as an alternative to traditional Cable.<sup>13</sup> Recently, however, Verizon has announced that it does not plan to expand its FiOS footprint beyond its current commitments.<sup>14</sup> According to one media report, Verizon's CEO, Lowell McAdam, stated that it was taking this step because "FiOS

<sup>9</sup> Verizon-Cox Public Interest Statement at 20, note 62.

<sup>&</sup>lt;sup>7</sup> Public Notice at 2.

<sup>°</sup> Id.

<sup>&</sup>lt;sup>10</sup> See Verizon-Cox Public Interest Statement at 18-19; see also, Verizon-SpectrumCo Public Interest Statement at 20-21.

<sup>&</sup>lt;sup>11</sup> Verizon-Cox Public Interest Statement at 18-19; Verizon-SpectrumCo Public Interest Statement at 20-21.

<sup>&</sup>lt;sup>12</sup> Verizon-Cox Public Interest Statement at 18-19; Verizon-SpectrumCo Public Interest Statement at 20-21.

<sup>13</sup> Dinesh C. Sharma, Verizon adds Showtime to FiOS TV Roster (April 26, 2005), *available at* 

http://news.cnet.com/Verizon-adds-Showtime-to-Fios-TV-roster/2100-1034 3-5685198.html.

<sup>&</sup>lt;sup>14</sup> Ingrid Lundgren, <u>Post Its \$3.6 Billion Cable Deal, Verizon Puts Brakes On FiOS Expansion</u> (Dec. 9, 2011), *available at* http://paidcontent.org/article/419-post-its-3.6-billion-cable-deal-verizon-puts-brakes-on-fios-expansion/.

directly competes with big cable companies, and...Verizon would rather spend its money expanding its wireless business instead of the expensive costs associated with building out the FiOS infrastructure."15

# B. Greenlining's Discussion with Verizon

On January 6, 2012, Greenlining met with representatives of Verizon. <sup>16</sup> During that meeting, Greenlining asked for details about the nature of the mutual agency agreements. Verizon's representatives indicated that Verizon would set the prices that the Cable Companies charge for Verizon services. 17 Verizon stated that it would offer the Cable Companies' cable services as part of a bundle. Verizon further stated that the Cable Companies would set the prices that Verizon charges for the Cable Companies' services. 18

Greenlining also asked for details about the implementation of the mutual agency agreements. While their determinations were preliminary, Verizon anticipated that Verizon representatives would be present in Cable Companies' stores, and vice versa. <sup>19</sup> Additionally, Verizon anticipated a "one bill" system for billing. 20

<sup>&</sup>lt;sup>15</sup> Tom Cheredar, <u>Lame</u>: <u>Verizon</u> is abandoning its FiOS TV & internet service to pursue wireless partnerships (December 9, 2011), available at http://venturebeat.com/2011/12/09/verizon-stops-fios-build-out/. It should be noted that the quotation is by the article's author, and not Mr. McAdams.

<sup>&</sup>lt;sup>16</sup> See Declaration of Samuel Kang, attached as Exhibit A. The Verizon representatives at the meeting were Tim McCallion, Verizon's West Region President, and Michael Glover, Verizon's Deputy General Counsel.

<sup>&</sup>lt;sup>17</sup> *Id*. <sup>18</sup> *Id*.

<sup>&</sup>lt;sup>19</sup> *Id*.

<sup>&</sup>lt;sup>20</sup> *Id*.

# C. Greenlining's Discussion with Comcast

On January 25, 2012, Greenlining met with representatives of Comcast.<sup>21</sup> When Greenlining asked for details about the implementation of the mutual agency agreements, the Comcast representatives indicated that, at least initially, subscribers would have to visit Verizon and Comcast stores independently to obtain the bundle of services.<sup>22</sup> Additionally, Comcast stated that customers would receive separate bills from Comcast and Verizon, and that Comcast and Verizon's customer service for their respective parts of the bundle would remain separate.<sup>23</sup>

#### III. ARGUMENT

- A. The Commission Should Obtain Further Information Before Deciding Whether The Proposed Transaction Is In the Public Interest.
  - 1. The Applicants Bear the Burden of Demonstrating that the Proposed Transaction is in the Public Interest.

A party seeking the acquisition or transfer of a license bears the burden of proving to the Commission, by a preponderance of the evidence, that the proposed transaction will serve the public interest, convenience, and necessity.<sup>24</sup> In making this determination, the Commission first assesses "whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules."<sup>25</sup> When reviewing a transaction, the Commission considers the competitive effects of that transaction on the public interest; however, the Commission's public interest inquiry extends far beyond potential

<sup>&</sup>lt;sup>21</sup> *Id.* The Comcast representatives at the meeting were Johnnie Giles, Comcast's Executive Director for External Affairs and John Gutierrez Comcast's Director—Government Affairs, California Region.

<sup>&</sup>lt;sup>22</sup> Id.

<sup>&</sup>lt;sup>23</sup> *Id*.

Memorandum Opinion and Order, In the Matter of Applications of AT&T Inc. and Cellco Partnership,
 WT Docket No. 09-104, 25 FCC Rcd 8704, 8716 (June 22, 2010) (hereafter, AT&T/Cellco Order).

competitive effects. 26 The Commission also considers "whether the proposed assignment and transfer of control...is likely to generate verifiable, transaction-specific public interest benefits."<sup>27</sup> The Commission's public interest inquiry includes a consideration of, "among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest."<sup>28</sup>

The Commission then considers whether the acquisition "could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes."<sup>29</sup> If there is a risk of harm, the Commission employs "a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits."30 If the potential public interest harms outweigh the potential public interest benefits, the transaction is not in the public interest.<sup>31</sup>

It is unclear at this point in the proceedings whether the proposed transaction is in the public interest, specifically whether the proposed transaction will preserve and enhance competition. Under the "actual potential competition" doctrine, the Cable Companies may be potential competitors that impose limit pricing on incumbent wireless providers. The Commission should investigate whether the Cable Companies' threat of entry into the market has affected competition, and how competition would be affected if that threat no longer existed.

<sup>&</sup>lt;sup>26</sup> *Id.* at 8717. <sup>27</sup> *Id.* 

<sup>&</sup>lt;sup>30</sup> *Id*.

<sup>&</sup>lt;sup>31</sup> *Id*.

#### 2. The Relevant Market.

The Commission's competitive analysis of a proposed transaction begins with determining appropriate market definitions for the transaction.<sup>32</sup> Market definition requires defining both the product market and the geographic market.<sup>33</sup>

#### a. The Product Market

The relevant product market consists of all goods which are "reasonably interchangeable" with a product.<sup>34</sup> Products are "reasonably interchangeable" if consumers (1) view those products as substitutes for each other and (2) would switch among those products in response to a change in price.<sup>35</sup> In determining whether goods are reasonably interchangeable, courts consider the price, the use, and the qualities of the respective products.<sup>36</sup> The Commission has previously held that when examining license transfers of this nature, the relevant market is for wireless voice and data services.<sup>37</sup> Accordingly, the market for wireless voice and data services is a relevant product market.

# b. The Geographic Market

In addition to determining the product market, the Commission also determines the relevant geographic market.<sup>38</sup> In evaluating the geographic market, courts and agencies try to "find the area or areas to which a potential buyer may rationally look for the goods or services he

<sup>38</sup> Merger Guidelines at 13.

 $<sup>^{32}</sup>$  Id

<sup>&</sup>lt;sup>33</sup> U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines 7 (August 19, 2010), available at http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf (hereafter, Merger Guidelines).

<sup>34</sup> United States v. E. I. Du Pont de Nemours & Co., 351 U.S. 377, 395 (U.S. 1956).

officed states v. E. f. Du Foilt de Neihours & Co., 331 O.S. 377, 395

Apple v. Psystar, 586 F. Supp. 2d 1190at 1196 (N.D. Cal. 2008).

<sup>&</sup>lt;sup>36</sup> *Id*.

<sup>&</sup>lt;sup>37</sup> See Order, In the Matter of Application of AT&T Inc. and Qualcomm Incorporated, WT Docket No. 11-18, ¶ 33 (December 22, 2011) (hereafter, "AT&T/Qualcomm Order").

seeks."<sup>39</sup> In transactions of this size, the Commission has recognized that both national and local markets are relevant geographic markets.<sup>40</sup> Accordingly, in this proceeding, the Commission should consider the effects of the transaction on local and national markets.

3. The Commission Should Investigate Whether the Proposed Transaction Has the Potential to Harm Competition By Eliminating Potential Competitors that Impose Limit Pricing.

The Applicants claim that the transactions will not affect competition because the transactions do not include the transfer of customers, facilities, or assets other than spectrum licenses. The Applicants' argument appears to be based on the premise that the transaction will not eliminate any competitors. However, this analysis fails to consider that the Cable Companies may be potential competitors that impose limit pricing on Verizon and other wireless companies. 42

## a. The Actual Potential Competition Doctrine

In determining whether a firm is a potential competitor, the Commission analyzes that firm under the "actual potential competition" doctrine.<sup>43</sup> "The doctrine of actual potential competition arises when a firm…proposes to enter a concentrated market…and, but for the merger, the firm likely would have entered in another way that would have reduced concentration."<sup>44</sup> When applying the actual potential competition doctrine, the Commission has established a five-prong test: (1) whether the market in question is highly concentrated, (2)

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<sup>&</sup>lt;sup>39</sup> U.S. v. Grinnell Corp., 384 U.S. 563, 588 (1966).

<sup>&</sup>lt;sup>40</sup> AT&T/Qualcomm Order at ¶ 35.

<sup>&</sup>lt;sup>41</sup> Verizon-Cox Public Interest Statement at 1; Verizon-SpectrumCo Public Interest Statement at 1.

<sup>&</sup>lt;sup>42</sup> *In re* Applications of Pac. Telesis Group & SBC Communications, Inc., 12 F.C.C.R. 2624, 2634; *see also*, Darren Bush and Salvatore Massa, *Rethinking the Potential Competition Doctrine*, 2004 WIS. L. REV. 1035, 1119 (2004).

<sup>&</sup>lt;sup>43</sup> Pac. Telesis Group & SBC Communications, 12 F.C.C.R. at 2634.

<sup>&</sup>lt;sup>44</sup> *Id.* (citations omitted).

whether few other potential entrants are "equivalent" to the company that proposes to enter the market by merger, (3) whether those alternative means of entry offer a substantial likelihood of reducing concentration in the target market or other significant pro-competitive effects, (4) whether the company entering the target market by merger would have entered the market but for the proposed merger; and (5) whether that company had other feasible means of entry. <sup>45</sup>

# i. The Markets In Question Are Highly Concentrated.

For a firm to be considered an actual potential competitor, the market in question (often referred to as the "target market") must be highly concentrated. According to the Commission's Fifteenth Wireless Report, in 2009, the average Herfindahl-Hirschman Index for mobile wireless market concentration was 2811; an index higher than 2500 is considered "highly concentrated." Accordingly, the national market for wireless voice and data services is highly concentrated.

It is likely that many of the local markets involved in the transaction are highly concentrated. As at least one party has noted, the current record lacks sufficient granular, market-by-market data. <sup>49</sup> In determining whether the Cable Companies are actual potential competitors, the Commission should consider the market concentration in each of the markets affected by the potential transaction.

<sup>&</sup>lt;sup>45</sup> *Id*.

<sup>&</sup>lt;sup>46</sup> *Id*.

 $<sup>^{47}</sup>$  Fifteenth Report, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, WT Docket No. 10-133  $\P$  52 (June 27, 2011) (hereafter, Fifteenth

Wireless Report).

<sup>&</sup>lt;sup>48</sup> Merger Guidelines at 19.

<sup>&</sup>lt;sup>49</sup> See Letter from Carl W. Northrup, Telecommunications Law Professionals, PLLC, to Marlene Dortch (January 27, 2012).

### ii. There are No Equivalent Potential Market Entrants

For a firm to be considered an actual potential competitor, the Commission must determine that few other potential entrants are "equivalent" to the firm under consideration. As Verizon notes, there is limited available spectrum, and it may be several years before the Commission makes more spectrum available. The proposed transaction promises to, at least in the short term, deprive Comcast, Cox, Bright House and Time Warner of the spectrum necessary to enter the wireless market. The transfer of a large amount of spectrum to the country's largest provider would eliminate a large amount of the spectrum in the secondary market, thereby precluding any other potential competitors from entering the market. Additionally, given recent Commission actions in the Lightsquared proceeding, 2 it appears unlikely that Lightsquared will be able to enter the market in the near future. Accordingly, it does not appear that there are any other equivalent potential entrants to the wireless market.

iii. The Commission Should Investigate Whether the Cable Companies Would Have Entered the Wireless Market But For the Proposed Transaction

In determining whether a firm is an actual potential competitor, the Commission considers whether the firm would have entered the market but for the proposed transaction.<sup>53</sup>

There does not appear to be any publicly available information regarding whether the Cable Companies would have entered the wireless market but for the proposed transaction. It is likely that this information is in the hands of the Applicants themselves.<sup>54</sup> The Commission should

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<sup>&</sup>lt;sup>50</sup> Pac. Telesis Group & SBC Communications, 12 F.C.C.R. at 2634.

Verizon-Cox Public Interest Statement at 17; Verizon-SpectrumCo Public Interest Statement at 18-19.
 FCC Public Notice, DA 12-214, IB Docket No. 11-109 (January 19, 2012) (Inviting Comments on NTIA Letter).

<sup>&</sup>lt;sup>53</sup> Pac. Telesis Group & SBC Communications, 12 F.C.C.R. at 2634.

<sup>&</sup>lt;sup>54</sup> See In re Applications of NYNEX Corp. & Bell AT. Corp., 12 F.C.C.R. 19,985, 20,028 (1997).

require the Applicants to demonstrate that the Cable Companies would not have entered the wireless market but for the transaction.

iv. The Commission Should Investigate Whether the Cable Companies had Feasible Means of Entry into the Wireless Market.

In determining whether a firm is an actual potential competitor, the Commission considers whether the firm had other feasible means of entry. <sup>55</sup> In this proceeding, SpectrumCo states that it is unwilling to make the investment necessary to build out a regional or national wireless network. <sup>56</sup> While Cox has offered wireless services in the past, it has done so primarily as a mobile virtual network operator (MVNO). <sup>57</sup> The Applicants have made general statements that it was not feasible for the Cable Companies to enter the wireless market. For example, Cox claimed that "[b]y May of 2011, Cox Wireless had concluded that it was uneconomic to provide 3G wireless services utilizing its own network infrastructure." <sup>58</sup> SpectrumCo similarly claimed that "as a business matter...entering the wireless marketplace as a standalone facilities-based provider would not provide a return on that investment that would warrant incurring the significant costs and risks involved." <sup>59</sup>

While the Applicants have made these general claims, they have not provided a great deal of evidence to support those claims. The Commission should require the Applicants to provide the specific models and analyses which led the Cable Companies to their decisions to not enter the wireless market. The Cable Companies state that their decision not to enter the wireless

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<sup>&</sup>lt;sup>55</sup> Pac. Telesis Group & SBC Communications, 12 F.C.C.R. at 2634.

<sup>&</sup>lt;sup>56</sup> Declaration of Robert Pick, Chief Executive Officer of SpectrumCo, LLC, Verizon-SpectrumCo Public Interest Statement, Exhibit 4 ("Pick Declaration") 5.

<sup>&</sup>lt;sup>57</sup> Declaration of Suzanne Fenwick, Executive Director for Corporate Development for Cox Communications, Inc., Verizon-Cox Public Interest Statement, Exhibit 4, pp. 2-3.

<sup>&</sup>lt;sup>58</sup> Verizon-Cox Public Interest Statement at 19.

<sup>&</sup>lt;sup>59</sup> Pick Declaration at 3.

market was due in large part to the difficulty and expense of obtaining (1) roaming contracts and (2) handset agreements. The Commission should investigate to what extent the Cable Companies attempted to negotiate roaming contracts and handset agreements with both Verizon and other incumbent wireless providers.

> v. The Commission should Investigate Whether the Cable Companies' Entry into the Wireless Market Would Likely Produce Deconcentration in the Market or Other Significant Pro-Competitive Effects.

In determining whether a firm is an actual potential competitor, the Commission examines whether that firm's means of entry offers a substantial likelihood of ultimately producing deconcentration, or other significant pro-competitive effects, in the target market.<sup>60</sup> At this point, it is unclear whether the Cable Companies' entry into the wireless market would produce deconcentration or other pro-competitive effects. Accordingly, the Commission should further investigate the potential effects of the Cable Companies' market entry.

As part of its investigation of these effects, the Commission should examine whether the Cable Companies exert any price constraints on incumbent providers' pricing, and whether the proposed transaction would eliminate those constraints.<sup>61</sup> As to future harms, the FCC should consider whether the proposed transaction would deter future entry. 62 The FCC should also consider whether any efficiencies could be achieved by licensing the spectrum rather than acquiring it.<sup>63</sup>

<sup>&</sup>lt;sup>60</sup> Pac Telesis, 12 F.C.C.R. at 2634

<sup>&</sup>lt;sup>61</sup> See Randy Stutz, American Antitrust Institute, An Examination of the Antitrust Issues Posed by Google's Acquistition of ITA 16 (Feb. 18, 2011).

<sup>62</sup> *Id*. 63 *Id*.

b. The Commission Should Investigate Whether the Cable Companies are Actual Potential Competitors.

It appears that the wireless market is highly concentrated, and that there are no other potential market entrants. However, there is insufficient information in the record to determine (1) whether the Cable Companies would have entered the wireless market but for the transaction, (2) whether the Cable Companies entry into the wireless market is feasible, or (3) whether the Cable Companies' entry into the market would have produced deconcentration or other procompetitive effects. Accordingly, before granting or denying the Application, the Commission should consider whether the Cable Companies are actual potential entrants. Should the Commission determine that the Cable Companies are actual potential entrants, the Commission should consider what effect the proposed transaction's removal of those potential entrants would have on pricing and customer service, and therefore the public interest.

- B. The Commission Should Investigate the Bundle of Agreements' Effect on the Public Interest.
  - 1. The Agency Maintenance and Joint Venture Agreements Potentially Affect the Public Interest.

Verizon argues that the Commission should view the proposed transaction in isolation, because the resale price maintenance and joint venture agreements are not contingent upon approval of the proposed transaction.<sup>64</sup> Verizon appears to be confusing the scope of the licenses at issue in this transaction with the scope of the Commission's jurisdiction. While the licenses relate to the provision of wireless services, the Commission's jurisdiction encompasses "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the

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<sup>&</sup>lt;sup>64</sup> Letter from Verizon et al. to Marlene Dortch 2, WT Docket No. 12-4 (Feb. 9, 2012).

basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property....<sup>65</sup>
While the proposed transaction may involve spectrum which is only used for the provision of wireless services, the transfer of that spectrum and the attendant agency and joint venture agreements deals will affect the wireless, cable, and broadband markets. It is therefore appropriate for the Commission to consider the effects of those agreements on the public interest.

2. The Commission Should Further Investigate the Public Interest Effects of the Agency Agreements.

The agency agreements could affect the public interest. For example, if a Verizon store was located in close proximity to a cable company's store, the firms might choose to consolidate those stores, resulting in lost jobs and franchises. Under a "one bill" system, consumers could experience confusion regarding which firm to contact regarding billing or other customer service issues. Under a "separate billing" system, consumers could fail to pay their wireless bill based on the mistaken belief that those costs were included in their cable bill. Under either system, customers may receive incorrect information regarding wireless or cable services from representatives of one company acting as the other company's agent.

Because the Applications only address the proposed transaction, there is no publicly available information in the record regarding the impact of the agency agreements. Additionally, some of the Applicants have provided contradictory information to Greenlining. Verizon stated that Verizon representatives would be present in Cable Companies' stores, and vice versa, and

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<sup>&</sup>lt;sup>65</sup> 47 U.S.C. § 151.

that customers would receive one bill for all services. 66 Comcast representatives indicated that, at least initially, subscribers would have to visit Verizon and Comcast stores independently to obtain the bundle of services, and those subscribers would receive separate bills from Comcast and Verizon <sup>67</sup>

Given the limited and, at times, conflicting information regarding the implementation of the agency agreements, it is unclear how those agreements will affect the public interest. The Commission should require the Applicants to clarify their plans regarding their "quad-play" offerings to ensure that the agency agreements will not result in customer confusion or other harms to the public interest. If necessary, the Commission should impose conditions to mitigate any potential harm to the public interest.

#### IV. **CONCLUSION**

At this time, Greenlining does not have sufficient information to determine whether the proposed transaction, and its attendant agreements, are in the public interest. Greenlining urges the Commission to investigate whether, as "actual potential entrants," the Cable Companies have exerted limit pricing on the wireless market, and the effect on competition should that limit pricing cease to exist. Additionally, the Commission should examine what effect the complete bundle of agreements will have on consumers and the public interest.

Greenlining has had beneficial and informative conversations with several of the Applicants. Further conversations with those Applicants will clarify matters and potentially alleviate Greenlining's concerns. Greenlining hopes that these conversations, further

 $<sup>^{66}</sup>$  See Declaration of Samuel Kang, attached as Exhibit A.  $^{67}$  Id.

information provided by the Applicants, and additional investigation by the Commission will create a complete, transparent, and public record on which the Commission can base its decision.

Respectfully submitted, Dated: February 21, 2012

/s/
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Ç
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#### **EXHIBIT A**

#### **DECLARATION OF SAMUEL KANG**

My name is Samuel S. Kang. I am the General Counsel of the Greenlining Institute ("Greenlining"). The Greenlining Institute is a national policy, organizing and leadership institute working for racial and economic justice. The Greenlining Institute's mission is to empower communities of color and other disadvantaged groups through multi-ethnic economic and leadership development, civil rights, and anti-redlining activities. We also advocate before regulatory agencies to advance these goals.

On January 6, 2012, Greenlining staff members Stephanie Chen, Enrique Gallardo, Paul Goodman, Orson Aguilar and I met with Tim McCallion, Verizon's West Region President, and Michael Glover, Verizon's Deputy General Counsel. During that meeting, Greenlining asked for details about the implementation of the mutual agency agreements. Verizon's representatives indicated that Verizon would set the prices that the Cable Companies charge for Verizon services. Verizon stated that it would offer the Cable Companies' cable services as part of a bundle. Verizon further stated that the Cable Companies would set the prices that Verizon charges for the Cable Companies' services.

Greenlining also asked for details about the implementation of the mutual agency agreements. While their determinations were preliminary, Verizon anticipated that Verizon representatives would be present in Cable Companies' stores, and vice versa. Additionally, Verizon anticipated a "one bill" system for billing.

On January 25, 2012, Stephanie Chen, Enrique Gallardo, Paul Goodman and I met with Johnnie Giles, Comcast's Executive Director for External Affairs and John Gutierrez, Comcast's Director—Government Affairs, California Region. When Greenlining asked for details about

the implementation of the mutual agency agreements, the Comcast representatives indicated that, at least initially, subscribers would have to visit Verizon and Comcast stores independently to obtain the bundle of services. Additionally, Comcast stated that customers would receive separate bills from Comcast and Verizon, and that Comcast and Verizon's customer service for their respective parts of the bundle would remain separate.

I am familiar with the contents of the foregoing Opening Comments. The factual assertions made in the comments are true to the best of my knowledge and belief.

I declare that the foregoing is true and correct.

Executed on February 21, 2012.

/s/		
	Samuel S. Kang	